

§ 5.19 Administrative Law Judge.

(a) An *Administrative Law Judge* shall mean any person designated by the Commandant pursuant to the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 46 U.S.C. 7703 or 7704.

(b) The Commandant has delegated to Administrative Law Judges the authority to admonish, suspend with or without probation or revoke a license, certificate or document issued to a person by the Coast Guard under any navigation or shipping law.

§ 5.23 Charge.

(a) A *charge* is the designation in general terms of an act or offense within the purview of 46 U.S.C. 7703 or 7704. A charge must be supported by one or more *specifications*. Under no circumstances does a *charge* constitute evidence nor may any inference be drawn from the fact that the holder of a license, certificate or document has been the subject of a *charge*.

(b) A charge must be stated as one of the following:

- (1) Misconduct;
- (2) Negligence;
- (3) Incompetence;
- (4) Violation of law or regulation;
- (5) Conviction for a dangerous drug law violation, use of a dangerous drug, or addiction to the use of dangerous drugs.

§ 5.25 Specification.

A *specification* sets forth the facts which form the basis of a *charge* and enables the respondent to identify the act or offense so that a defense can be prepared. Each specification shall state:

- (a) Basis for jurisdiction;
- (b) Date and place of act, or offense; and
- (c) The facts constituting the alleged act or offense.

§ 5.27 Misconduct.

Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources.

It is an act which is forbidden or a failure to do that which is required.

§ 5.29 Negligence.

Negligence is the commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

§ 5.31 Incompetence.

Incompetence is the inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination thereof.

§ 5.33 Violation of law or regulation.

Where the proceeding is based exclusively on that part of title 46 U.S.C. section 7703, which provides as a basis for suspension or revocation a violation or failure to comply with 46 U.S.C. subtitle II, a regulation prescribed under that subtitle, or any other law or regulation intended to promote marine safety or protect navigable waters, the *charge* shall be *violation of law or violation of regulation*. The *specification* shall state the specific statute or regulation by title and section number, and the particular manner in which it was allegedly violated.

§ 5.35 Conviction for a dangerous drug law violation, use of, or addiction to the use of dangerous drugs.

Where the proceeding is based exclusively on the provisions of title 46, U.S.C. 7704, the *charge* will be *conviction for a dangerous drug law violation* or *use of dangerous drugs* or *addiction to the use of dangerous drugs*, depending upon the circumstances. The *specification* will allege jurisdiction by stating the elements as required by title 46, U.S.C. 7704, and the approximate time and place of the offense.